

ESTATE OF JOSEPHINE RUTH
BERGERON WHITAKER

: Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 93-38
:
: January 7, 1993

Appellant Joanna Grace Storm seeks review of a November 3, 1992, order denying rehearing issued in the above estate by Administrative Law Judge William E. Hammett. Judge Hammett's order let stand an August 17, 1992, order approving will and decree of distribution entered by Administrative Law Judge Sam E. Taylor. Judge Taylor's order held that certain property owned by decedent Josephine Ruth Bergeron Whitaker escheated to the Citizen Band Patawatomí Tribe under 25 U.S.C. § 2206.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

The documents submitted with appellant's notice of appeal show that the only issue being raised is the constitutionality of 25 U.S.C. § 2206, as amended. This was apparently also the only issue raised in appellant's petition for rehearing. The Board has previously held that it lacks jurisdiction to declare an act of Congress unconstitutional. See Estate of William Youpee, 22 IBIA 248 (1992); Estate of Shonie Curley, 17 IBIA 115 (1989). The Board sees no purpose in delaying final Departmental resolution of this matter. With this dismissal, appellant may, if she so desires, proceed immediately to Federal court.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Hammett's November 3, 1992, order denying rehearing is dismissed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge